

Decision 06-04-056 April 27, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Recovery of Pre-Deployment Costs of the
Advanced Metering Infrastructure (AMI) Project
(U 39 M).

Application 05-03-016
(Filed March 15, 2005)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 05-09-044**

1. Summary

This decision awards The Utility Reform Network (TURN) \$31,457.38 in compensation for its substantial contributions to Decision (D.) 05-09-044. This proceeding is closed.

2. Background

Pacific Gas and Electric Company (PG&E) filed the subject application seeking authorization to spend up to \$49 million over a six-month period for pre-deployment costs for its proposed Advanced Metering Infrastructure (AMI) Project. The application also requested approval of related ratemaking and cost recovery elements. The application was inherently linked to Application (A.) 05-06-028, PG&E's request for approval to deploy AMI and for pre-approval to spend approximately \$2 billion on the AMI project. The proposed decision of Administrative Law Judge (ALJ) Cooke and the alternate decision of assigned Commissioner Peevey were issued concurrently on August 19, 2005. The ALJ's proposed decision approved only \$7 million, limited to activities that would

assess minimum functionality and investments, but independent from a decision on whether ratepayers should invest in PG&E's proposed AMI Project. The alternate decision adopted the entirety of PG&E's funding request as meeting the minimum functionality criteria. On September 22, 2005, the Commission unanimously adopted the alternate decision as its final decision.

On October 24, 2005, TURN timely filed an application for rehearing of D.05-09-044, arguing that the record did not support the approved funding request, and that the outcome was not consistent with the Commission's current strategic plan and policy statement on energy issues (Energy Action Plan II). D.06-01-045 denied rehearing.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

- a. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
- b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

- c. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- d. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
- e. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
- f. The claimed fees and costs are reasonable (§1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items a-d above are combined, followed by separate discussions on Items e-f.

4. Procedural Issues

The PHC in this matter was held on June 22, 2005. TURN timely filed its NOI on July 22, 2005. In its NOI, TURN asserted financial hardship, and provided a budget and outline of its proposed activities.

Section 1802(b)(1) defines a “customer as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.” On August 1, 2005, ALJ Cooke ruled that TURN is a customer pursuant to § 1802(b)(1)(C), and meets the financial hardship condition, pursuant to § 1804(b)(1), through a rebuttable presumption of eligibility, because TURN met this requirement in another

proceeding within one year of the commencement of this proceeding (ALJ Ruling dated July 27, 2004, in Rulemaking (R.) 04-04-003).

TURN filed its request for compensation on November 22, 2005, within 60 days of D.05-09-044 being issued.¹ In view of the above, we find that TURN has satisfied all the procedural requirements necessary to make its request for compensation.

5. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is

¹ No party opposes the request.

then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.²

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN states it was extensively involved in the issue of whether ratepayers should fund up to \$49 million in AMI pre-deployment costs, arguing that authorization of pre-deployment funds prior to a comprehensive review of the AMI proposal as a whole would contravene the statutory reasonableness requirements of § 451 and Commission precedent. TURN also argued that pre-deployment costs should, at most, be limited to costs associated with physical testing and minimum functionality analysis. TURN served testimony, conducted cross-examination, and filed opening and reply briefs.

Although the proposed decision of ALJ Cooke found that legal and policy impediments did not completely bar pre-approval of expenditures, it did find that TURN's arguments had merit with respect to the scope of funding. The proposed decision concluded it was reasonable to authorize only \$7 million in ratepayer funding for those activities that provided value to ratepayers regardless of whether the Commission ultimately decided that ratepayers should

² D.98-04-059, 79 CPUC2d, 628 at 653.

fund the entire AMI project under consideration in A.05-06-028, as well as those activities designed to test minimum meter functionality. Although the final decision authorized the full \$49 million funding requested by PG&E, it duplicated the proposed decision's discussions regarding the legal impediments to funding and scope of funding, issues we see as substantial in the discussion here.

The Commission has awarded compensation where the intervenor's participation contributed to the decision-making process, even though the Commission's final decision did not adopt the intervenor's position or adopted it only in part. (See D.92-08-030, *mimeo.* at 4; D.96-08-023, *mimeo.* at 4; D.96-09-024, *mimeo.* at 19; D.99-08-006; D.99-11-006, *mimeo.*, pp. 9-10.; D.01-06-063, *mimeo.*, pp. 6-7.) The Commission also has awarded compensation where the intervenor raised an important issue and developed the record on its implications. (D.98-11-014, *mimeo.*, p.8.) Here, TURN advanced a position largely adopted by the ALJ in the proposed decision. Though the final decision did not adopt TURN's position on the funding amount, the final decision did accept TURN's contention about the burden required of PG&E to justify the amount requested. We therefore find that TURN made a substantial contribution to the decision.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

6. Reasonableness of Requested Compensation

TURN requests \$31,505.88 for its participation in this proceeding, as follows:

TURN EXPENSES:				
Attorney/Advocate Time	Billing Period	Hourly Rate	Hours Claimed	Amount Claimed
N. Suetake	2005	\$190	84.55	\$16,064.50

M. Hawiger	2005	\$270	14.5	\$3,915.00
B. Finkelstein	2005	\$395	0.5	\$197.50
N. Suetake (compensation request)		\$95	8.0	\$760.00
		Subtotal		\$20,937.00
Direct Expenses				\$162.13
TOTAL (TURN)				\$21,099.13

CONSULTING EXPENSES:				
Expert Time	Billing Period	Hourly Rate	Hours Claimed	Amount Claimed
J. Nahigian	2005	\$155	65.75	\$10,191.25
Direct Expenses				\$215.50
Total (Consultant)				\$10,406.75
GRAND TOTAL				\$31,505.88

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

A. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

B. Market Rate Standard

We next consider whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

TURN requests hourly rates of \$270 and \$395 for attorneys Hawiger and Finkelstein, respectively, for work performed in 2005. We previously approved these same rates in D.05-10-010, and adopt them here.

TURN requests an hourly rate of \$190 for attorney Suetake, for work performed in 2005. Suetake is a new attorney who joined TURN directly out of law school. We previously approved this same rate for first-year attorneys in D.05-11-031, and adopt it here.

TURN requests an hourly rate of \$155 for consultant Nahigian of JBS Energy, Inc. This is JBS's normal billing rate for Nahigian and represents an increase over his previously approved rate of \$140 for work performed in 2004. TURN makes this request pursuant to the condition below identified in D.05-11-031 as permitting consideration of such an increase from previously authorized rates:

Where a representative's last authorized rate is below that of the range of rates shown in the tables above for representatives with comparable qualifications, an increase is reasonable to bring the representative's rate to at least the bottom level of the rate range. Here, we have in mind certain representatives who have historically sought rates at or below the low end of the range of rates for their peers. (D.05-11-031, mimeo. at 17.)

TURN states that Nahigian fits within this description, by virtue of having nearly 20 years of experience analyzing utility operations and rate design issues; has developed particular expertise and taken the lead for the firm's expert witness work in the areas of line and service extensions, demand response programs, and advanced metering proposals; and has increasingly, since 2004, sponsored expert witness testimony on behalf of the firm. TURN submits that

the currently authorized hourly rate of \$140 is just above the low end of the range of 2005 hourly rates for intervenors,³ and that an hourly rate closer to the mid-range of approved rates, e.g., \$235, would be reasonable for representatives with Nahigian's qualifications and experience. TURN submits that the requested \$155 rate would bring Nahigian's authorized rate to the bottom of the range for witnesses with his qualifications and experience.

We find that the \$155/hour rate for Nahigian for 2005 is clearly within the guidelines and principles established in D.05-11-031, and adopt that rate here.

C. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Had the proposed decision become the final decision of the Commission, TURN's participation would have reduced the authorized funding from \$49 million to \$7 million. Although the final decision did not adopt TURN's position, we benefited from TURN's analysis and discussion of legal impediments to funding and scope of funding, as reflected in the fact that the final decision duplicates verbatim the proposed decision's discussion of TURN's contributions regarding the issues. We also note that D.05-09-044 determined the appropriateness of our allowing PG&E to spend up to \$49 million before we had approved the \$2 billion requested in the larger AMI application (A.05-06-028).

³ D.05-11-031 adopts \$110 to \$360 as the range of 2005 hourly rates for experts.

Given this potential multi-million dollar expenditure of funds on a program that might not go forward, we find it productive for ratepayers that TURN incur these costs to conduct its analysis. Thus, we find that TURN's participation was productive.

D. Direct Expenses

The itemized direct expenses submitted by TURN include costs for travel, photocopying, postage, and telephone services, and total \$377.63. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed, with one exception. TURN includes, as an itemized direct expense for which it seeks compensation, \$48.50 for a lunch for the consultant and one of TURN's attorneys. We exclude this amount from TURN's award compensation. We find all other costs to be reasonable.

7. Award

As set forth in the table below, we award TURN \$31,457.38.

TURN EXPENSES:				
Attorney/Advocate Time	Billing Period	Hourly Rate	Hours Claimed	Amount Claimed
N. Suetake	2005	\$190	84.55	\$16,064.50
M. Hawiger	2005	\$270	14.5	\$3,915.00
B. Finkelstein	2005	\$395	0.5	\$197.50
N. Suetake (compensation request)		\$95	8.0	\$760.00
		Subtotal		\$20,937.00
Direct Expenses				\$162.13
Total (TURN)				\$21,099.13
CONSULTING EXPENSES:				
Expert Time	Billing Period	Hourly Rate	Hours Claimed	Amount Claimed

J. Nahigian	2005	\$155	65.75	\$10,191.25
Direct Expenses				\$167.00
Total (Consultant)				\$10,358.25
GRAND TOTAL				\$31,457.38

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on February 5, 2006, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by PG&E as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day comment period for this decision is being waived.

9. Assignment of Proceeding

Michael Peevey is the Assigned Commissioner, and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made a substantial contribution to D.05-09-044 as described herein.
3. TURN requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. TURN requested related expenses that, as adjusted herein, are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$31,457.38.
6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.05-09-044.
2. TURN should be awarded \$31,457.38 for its contribution to D. 05-09-044.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without further delay.
5. This proceeding is closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$31,457.38 as compensation for its substantial contributions to Decision 05-09-044.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning February 5, 2006, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This proceeding is closed.

This order is effective today.

Dated April 27, 2006, at San Francisco, California.

MICHAEL R. PEEVEY

President

GEOFFREY F. BROWN

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0604056	Modifies Decision?
Contribution Decision(s):	D0509044	
Proceeding(s):	A0503016	
Author:	ALJ Cooke	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Utility Reform Network	November 22, 2005	\$31,505.88	\$31,457.38	no	Limited expense disallowance

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	The Utility Reform Network	\$270	2005	\$270
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395	2005	\$395
Nina	Suetake	Attorney	The Utility Reform Network	\$190	2005	\$190
Jeffrey	Nahigian	Economist	The Utility Reform Network	\$155	2005	\$155